

**NORTHCREEK TRADE CENTER  
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Northcreek Trade Center Conditional Annexation and Zoning Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between **Lincoln North Creek, L.L.C.** ("Owner"), and the **City of Lincoln, Nebraska**, a municipal corporation, ("City").

**RECITALS**

A. Owner has requested the City to annex the real estate legally described in Exhibit "A" attached (Property).

B. Owner has requested City to rezone a portion of the Property from AG Agricultural District to H-3 and H-4 General Commercial District. That portion of the Property not being rezoned is shown in the Comprehensive Plan as "Commercial" and will be rezoned in the future for commercial uses.

C. The Property lies adjacent to Interstate 80, which has been identified by the City as a major entryway corridor. Special treatment in the form of landscaping and signage controls have been identified by the Entryway Corridor Study as being desirable for the purpose of unifying the design and aesthetic quality of major entrances to the City. Owner is willing to provide landscaping and restrictions on signage beyond the requirements of the H-3 and H-4 General Commercial District as a means of promoting the goal of developing consistent design and aesthetically pleasing entryway corridors to the city. Owner has also proposed restrictive covenants which will promote consistent architecture within the Northcreek Trade Center and assure use of quality materials.

D. The development and operation of a portion of the Property as a H-3 and H-4 General Commercial District will cause increased traffic on the public street system that serves and provides access that will require road improvements, as called for in the Traffic Impact Study. Due to the possible inadequacy of the street system, the City is willing to annex and rezone as requested provided Owner agrees to make certain improvements to the public street system which serves the Property.

E. City and Owner agree that the City has a legitimate state interest in the public health, safety, and welfare which is promoted by requiring Owner to pay Owner's fair share of the cost to construct street improvements and sanitary sewer and to provide for the safe and efficient movement of motor vehicles upon the public street system and that an essential nexus exists between the City's above interest and the conditions placed upon Owner under this Agreement. In addition, the City and Owner have made an individualized determination and agree that the conditions placed upon Owner under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects, full development and operation of the Property under the H-3 and H-4 General

Commercial District zoning would have on the public sanitary sewer system, and street system that serves the Property.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties do agree as follows:

1. Annexation by the City. The City agrees to annex the Property.
2. Rezoning with Restrictions on Use. The City agrees to rezone that portion of the Property from AG Agricultural Residential District to H-3 and H-4 General Commercial District as legally described Change of Zone No. 3260.
3. Street Improvements. Owner agrees to make certain improvements to public streets which serve the Property as follows:
  - a. Fletcher Street as a two-lane urban cross section throughout the proposed Preliminary Plat; the access at Lot 1, Block 2, shall be a full access intersection and the access at Lot 5, Block 2, shall be full access until such time as the City improves Fletcher to four lanes, at which time it shall be a full access inbound, but restricted to right turn outbound. The cost of constructing an island to prevent outbound left turns shall be paid by the owner of Lot 5, Block 2, at the time the City improves Fletcher to four lanes.
  - b. The owner is responsible for the total cost of constructing Fletcher Avenue to a two lane urban cross section plus the cost of required left and right turn lanes and the cost of the paving to transition from the existing paving cross section at the intersection of Fletcher and Telluride to the proposed two lane cross section.
  - c. Left turn lanes shall be provided at all intersections where left turns are allowed. Proper through lane and opposing left turn lane alignment must be provided at all intersections and access points where applicable. Owner shall be responsible for the total cost of the temporary and permanent paving to construct these left turn lanes.
  - d. Right-of-way dedication to include 25-foot corner triangles at all intersections and full access driveways.

Prior to final plat approval, Owner shall either grade and construct the street improvements or provide the City with escrowed funds or other security satisfactory to the City to guarantee such grading and construction.

4. Landscaping, Signage, and Covenants. Owner shall install landscaping pursuant to the landscape plan submitted with the proposed Preliminary Plat of Northcreek Trade Center, and shall provide for the permanent maintenance of same. Signs shall be restricted as indicated in Attachment "A". Restrictive Covenants relative to building materials and design shall not be amended without approval of the Planning Director or City Council of the City of Lincoln.

5. Level of Service and Proposed Land Uses. By acceptance of the construction and/or payment for off-site improvements identified in the traffic impact study, the City in no way warrants or assures any particular level of service on the public streets and roads serving the Property for the development contemplated under the changes of zone.

6. Future Cost Responsibilities. Except as stated herein, it is understood and agreed between the parties that the provision of the above-described municipal infrastructure improvements and the allocation of cost responsibilities therefor in no way limit the right of the City to impose reasonable conditions or to require reasonable additional dedications, contributions, or construction in conjunction with the approval of future zoning requests, plats and dedications, use permits, special permits, planned unit developments, or community unit plans incorporating therein the Property or any portion thereof which has been subject to annexation or rezoning in conjunction with this Agreement. Such future dedications, contributions and construction may include, but shall not be limited to, local sewers, water mains, paving, trails, detention ponds, storm sewers, or transportation improvements relating to commercial development, including necessary street widening, traffic signals and added turn lanes necessitated, in the opinion of the City, by major commercial development in the area.

7. Essential Nexus. City and Owner agree that the City has a legitimate state interest in the public health, safety, and welfare which is promoted by requiring Owner to pay Owner's fair share of the cost to construct Fletcher Street to provide for the safe and efficient movement of motor vehicles upon the public street system and that an essential nexus exists between the City's above interest and the conditions placed upon Owner under this Agreement. In addition, the City and Owner have made an individualized determination and agree that the conditions placed upon Owner under this Agreement are related both in nature and extent and are in rough proportionality to the projected adverse effects, full development and operation of the Property under the H-3 and H-4 General Commercial District, the R-3 Residential District, and the H-3 and H-4 General Commercial District, zoning would have on the public sanitary sewer system, water system, and street system that serves the Property.

8. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns and shall inure to and run with the Property.

9. Amendments. This Agreement may only be amended or modified in writing signed by the parties to this Agreement.

10. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute, acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

11. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska. The invalidity of any portion of this Agreement shall not invalidate the remaining provisions.

12. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

13. Construction. Whenever used herein, including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

14. Relationship of Parties. Neither the method of computation of funding or any other provisions contained in this Agreement or any acts of any party shall be deemed or construed by the City, Owner, or by any third person to create the relationship of partnership or of joint venture or of any association between the parties other than the contractual relationship stated in this Agreement.

15. Assignment. In the case of the assignment of this Agreement by any of the parties, prompt written notice shall be given to the other parties who shall at the time of such notice be furnished with a duplicate of such assignment by such assignor. Any such assignment shall not terminate the liability of the assignor to perform its obligations hereunder, unless a specific release in writing is given and signed by the other parties to this Agreement.

16. Default. Owner and City agree that the annexation and changes of zone promote the public health, safety, and welfare so long as Owner fulfills all of the conditions and responsibilities set forth in this Agreement. In the event Owner defaults in fulfilling any of its covenants and responsibilities as set forth in this Agreement, the City may in its legislative authority rezone the Property to its previously designations or such other designations as the City may deem appropriate under the then existing circumstances, or

take such other remedies, legal or equitable, which the City may have to enforce this Agreement or to obtain damages for its breach.

17. Recordation. This Agreement shall be filed in the Office of the Register of Deeds of Lancaster County, Nebraska at Owner's cost and expense.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

**THE CITY OF LINCOLN, NEBRASKA**  
A Municipal Corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Don Wesely, Mayor

**LINCOLN NORTH CREEK L.L.C., A Ne-**  
braska limited liability company

By:   
Robert D. Hampton, Manager

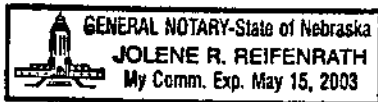
STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by Don Wesely, Mayor of the City of Lincoln, Nebraska, on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of February, 2000, by Robert D. Hampton, Manager of Lincoln North Creek L.L.C., a Nebraska limited liability company, on behalf of the company.



Jolene R. Reifensath  
Notary Public

(G:\WPData\WH\Hampton NCTC 523-99\Hampton 523-99 Annexation Agrmt 5th version.wpd)

## LEGAL DESCRIPTION

A LEGAL DESCRIPTION OF LOT 34 I.T. IN THE SOUTH HALF OF SECTION 36, TOWNSHIP 11 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA, AND MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

REFERRING TO THE SOUTHEAST CORNER OF SAID SECTION 36; THENCE: N89°47'24"W, (AN ASSUMED BEARING), ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 36, A DISTANCE OF 2680.39 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 36; THENCE: N89°48'55"W, ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SECTION 36, A DISTANCE OF 636.47 FEET TO THE POINT OF BEGINNING; THENCE: CONTINUING N89°48'55"W, ON SAID LINE A DISTANCE OF 1170.46 FEET TO THE SOUTHWEST CORNER OF LOT 34 I.T. AND THE POINT OF CURVATURE OF A CURVE TO THE LEFT WITH A CENTRAL ANGLE OF 11°22'39", A RADIUS OF 5904.58 FEET, AN ARC LENGTH OF 1172.49 FEET, A CHORD BEARING N44°27'46"E AND A CHORD LENGTH OF 1170.57 FEET; THENCE: ON SAID CURVE TO THE LEFT AND ON THE WESTERLY LINE OF LOT 34 I.T., A DISTANCE OF 1172.49 FEET TO THE POINT OF TANGENCY; THENCE: N38°46'27"E, ON SAID WESTERLY LINE A DISTANCE OF 1600.78 FEET; THENCE: N38°49'13"E, A DISTANCE OF 709.72 FEET TO A POINT ON THE NORTH LINE OF LOT 34 I.T. AND ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 36; THENCE: S89°35'42"E, ON SAID NORTH LINE A DISTANCE OF 1666.98 FEET; THENCE: S00°19'16"W, A DISTANCE OF 257.13 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 04°18'24", AN ARC LENGTH OF 153.04 FEET, A RADIUS OF 2036.00 FEET, A CHORD BEARING S01°49'56"E AND A CHORD LENGTH OF 153.00 FEET; THENCE: ON SAID CURVE TO THE LEFT, A DISTANCE OF 153.04 FEET TO THE POINT OF TANGENCY; THENCE: S03°59'08"E, A DISTANCE OF 338.97 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 61°41'51", AN ARC LENGTH OF 284.28 FEET, A RADIUS OF 264.00 FEET, A CHORD BEARING S26°51'48"W AND A CHORD LENGTH OF 270.74 FEET; THENCE: ON SAID CURVE TO THE RIGHT, A DISTANCE OF 284.28 FEET TO THE POINT OF TANGENCY; THENCE: S57°42'43"W, A DISTANCE OF 388.14 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 47°30'08", AN ARC LENGTH OF 154.21 FEET, A RADIUS OF 186.00 FEET, A CHORD BEARING S33°57'39"W AND A CHORD LENGTH OF 149.83 FEET; THENCE: ON SAID CURVE TO THE LEFT, A DISTANCE OF 154.21 FEET TO THE POINT OF TANGENCY; THENCE: S10°12'36"W, A DISTANCE OF 135.21 FEET; THENCE: N89°47'24"W, A DISTANCE OF 233.10 FEET; THENCE: S65°26'05"W, A DISTANCE OF 1958.83 FEET; THENCE: S31°10'07"W, A DISTANCE OF 421.31 FEET TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 108.986 ACRES MORE OR LESS.

EXHIBIT

A

**RESTRICTIVE COVENANTS**  
**(North Creek Trade Center)**

The undersigned (Owner) is the titleholder of record of the following-described real estate:

North Creek Trade Center Preliminary Plat; North Creek Second Addition, Lincoln, Lancaster County, Nebraska, individually referred to as "Lot" and collectively referred to as "Properties".

The private frontage roads providing access to and from Fletcher Avenue shall be referred to as "Commons".

The Properties, together with any additions of Properties or Commons as provided for in paragraph 24, are collectively referred to as the "Trade Center".

North Creek Owners Association ("Association") will be incorporated in Nebraska for the purposes of enforcing the Restrictive Covenants established upon the Properties administering and maintaining the Commons and providing services to its Members.

These Restrictive Covenants are established within and upon the Trade Center.

1. USE: No Lot within the Properties shall be used other than for commercial purposes per approved zoning.

2. ACCESS: The intersection of the private frontage road with Fletcher at Lot 5, Block 2, shall be modified to restrict access from the frontage road to Fletcher to right turns only at such time as the City improves Fletcher to four lanes. Such modification shall be made by the Association, at its cost and assessed against the Properties as a maintenance expense.

3. COMPLETION OF CONSTRUCTION: Any building placed or constructed upon any Lot within the Properties shall be completed within 18 months after the commencement of construction.

4. APPROVAL OF PLANS: Owner or its assignees shall have the exclusive right to establish grades and slopes for any Lot within the Properties and to fix the grade at which any building or other improvement shall be placed or constructed upon any Lot, in conformity with the general plan for the development of the Properties. Plans for any building or other improvement to be placed, constructed or remodeled upon any Lot within the Properties shall be submitted to Owner and shall show the design, size, and exterior material for the building or improvement and the plot plan for the Lot. One set of plans shall be left on permanent file with the Owner or Association. Grading of the Lot or construction, placement or remodeling of any building or improvement shall not be commenced unless written approval of the plans has been secured from the Owner. Written approval or disapproval of the plans shall be given by the Owner within 30 days of receipt of the plans. In the event Owner fails to provide the approval or disapproval within 30 days, the plans shall be deemed to be approved. Approval of the plans shall not be unreasonably withheld, and upon disapproval, a written statement of the grounds for disapproval shall be provided. The Owner shall have the exclusive right to disapprove the



plans, if in the Owner's opinion, the plans do not conform to the general standard of development in the Properties. The rights and duties of the Owner under this paragraph, except as to Lots of which the Owner is the titleholder, may be assigned by the Owner in writing to the Association at any time. The Owner or the Association may charge reasonable fees in connection with the review including fees charged by engineers or architects or others employed by Owner to review the plans.

5. GENERAL STANDARDS FOR BUILDINGS. The following general standards of development shall guide the Owner in the review of any plans for buildings submitted for approval within the Business Park. The Owner shall have the right to reduce, increase or otherwise explicitly modify these standards within the Properties. However, any modification of the standards shall be to permit an alternate which will be in conformance with maintaining a high quality, high amenity business park, and shall be subject to approval by the Planning Director or City Council of the City of Lincoln.

- a. Standards. The Owner shall establish and periodically publish reasonable standards and design guidelines with respect to all buildings and other improvements on any Lot within the Properties ("Standards"). National or regional plans including specific building materials, and colors shall be reasonably accommodated.
- b. Exterior Finish
  - i. Approval. All exterior finish materials and colors shall meet these standards and be approved by the Owner.
  - ii. Front/Street Facing Elevation. The front or public street facing elevation of any building (limited to a singular side) shall be of brick, colored concrete masonry (split faced or fluted), insulated concrete formed (ICF) with cement board (Hardi-plank), EIFS surface, concrete tilt-up with colored stain, or painted surface. The front or street facing elevation of any building shall be a minimum 30% brick, colored concrete masonry (split faced or fluted), insulated concrete formed (ICF) with EIFS surface, concrete tilt-up with colored stain surface.
  - iii. Other Elevations. On the 3 remaining sides other than the front or street facing side any material shall be permitted provided it is compatible with the architectural quality of the overall development of the Business Park and it is low maintenance. Elevations facing Interstate 80 are encouraged to have openings with glass or glazing; 2 color facade treatments are also acceptable. Overhead doors are not permitted along Interstate 80 facing elevations unless screened with landscape material or behind berms or grade as indicated within these covenants. Ribbed metal siding (vertical or horizontal) shall be allowed to cover a maximum of 70% of the building elevations.
  - iv. Colors. Exterior paint colors and other finish shall be compatible with an upscale business development. Exterior paint colors and other finish shall be compatible with an upscale business development. No loud,

unnatural obnoxious colors shall be permitted. Recommended Color families:

Sky tints-toward cool blue/gray-cast neutrals  
Forest tints-green cast neutrals  
Sun tints-toward yellow-cast neutrals  
Earth tints-toward beige and natural tones  
Desert tints-toward warm, sand and clay tones

Bright accent colors may be approved at Developers discretion as part of corporate national design concepts or accent colors.

- c. Roof. Pitched roofs (3/12 minimum) are recommended with a 12" overhang or greater required at 50% of building. Hip style roof is recommended, but not required. Maximum vertical rise at roof ridge is 10'. If building width exceeds 80', low slope roof may be used in conjunction with pitched roof around perimeter. Radiuses or other roof forms similar in scale and slope to above are acceptable.
- i. Materials. Standing seam or ribbed metal, concrete, clay or metal shingles shall be permitted. Asphalt shingles (300# Horizon style minimum) may be approved at Developers discretion. Colors as indicated in Section iv Color above unless approved. Galvanized metal is specifically excluded for roof and wall materials.
- d. Building Appurtenances. Air conditioning condensers and heat pumps should be screened from the street/parking view with plant material or be screened using materials similar to building elevations or roof.

6. GENERAL STANDARDS FOR IMPROVEMENTS OTHER THAN BUILDINGS. The following general standards shall be satisfied in the construction and installation of improvements and structures other than a building. Written approval from the Owner for improvements and structures other than buildings is required and shall comply with these standards.

- a. Fencing. Fencing shall be minimal maintenance materials such as a minimum chain link, brick or concrete masonry, wrought iron, aluminum, steel or vinyl construction; no chain link with slats shall be permitted. These materials shall be used for refuse collection and dock area screening.
- b. Accessory Structures. All accessory structures or improvements shall be compatible with the quality of the building on the Lot and the overall Business.
- c. Lighting.
  - i. Parking Areas. Pole mounted TYPE III distribution metal halide fixtures, back-to-back or singles at appropriate heights. TYPE V distribution may be used for large parking areas. Parking lighting if installed in large areas shall conform to the zoning design standards for parking lots as adopted in the Lincoln Municipal Code.

- ii. Buildings. Ground mounted metal halide fixtures oriented to highlight building facades and entrances are encouraged. Ground mounted bollards used for pedestrian way lighting should be of same lamp type as facade lighting. Wall mounted downlights at 9' to 15' above are encouraged, with or without diffusing lense. Uplighting may also be included as a feature of the wall mounted downlight. Extended arm fluorescent sign lighter fixtures shall be used only with prior approval of the developer. Wall packs mounted on the building shall be the "Performance" type with cut-off lenses. Forward throw version lenses shall be low cut-off angle variety.
- iii. Dock Areas. Front shielded and TYPE III cut-off fixtures are strongly encouraged at dock wall and personnel doors. Recommended mounting height shall coordinate with other luminaire heights on building. Mounting luminaire between overhead doors is preferred method. Where dock canopies are used, 8' strip fluorescent luminaires may be used if a glare skirt is installed across face of canopy, minimizing glare to public traffic.
- d. Signs. Signs shall comply with the City of Lincoln code and zoning regulations and North Creek additional standards (*See Attachment A*).
- e. Landscaping. All landscaping plans other than the installation of turf grass shall require Owner approval and North Creek additional standards (*See Attachment B*).
- f. Parking Lots. All parking, curb, walk and facilities shall be of concrete subject to Owner's right to waive the requirement on large facilities.

7. GOVERNMENTAL REQUIREMENTS: All buildings and other improvements within the Properties shall be constructed in conformity with the requirements of the applicable building codes of the City of Lincoln, Nebraska. Public sidewalks and street trees shall be installed during the construction of any building as required by the City of Lincoln, Nebraska. The titleholder of any Lot shall at all times keep the Lot, buildings and other improvements in a safe, clean, wholesome condition and comply in all respects with all government, health, fire and public ordinances, requirements and regulations. In the event any titleholder fails to comply with these requirements, then the Association may after 10 days written notice, enter upon the Lot and make any and all corrections or improvements that may be necessary to meet such standards, all at the sole expense of the noncompliant titleholder of the Lot.

8. OUTSIDE STORAGE. No article of merchandise or other material shall be kept, stored, or displayed outside a building, unless it is screened by fences, walls or plantings. In no event shall any part of any open Lot be used for long-term storage or abandonment of any property that is not reasonably screened from view; any such storage area abutting I-80 shall be 100 percent screened from view. In the event plantings of live material are used to provide screening, this provision shall be reasonably interpreted so that 100% screening is not immediately required but would occur over 5-8 years as the plant material grows and matures.

9. TEMPORARY STRUCTURES: No partially completed temporary building and no trailer, tent, shack, or garage on any Lot within the Properties shall be used as a permanent

place of business or used for a temporary business location except during construction of a permanent business building.

10. NUISANCE: No noxious or offensive activity shall be conducted or permitted upon any Lot within the Properties, nor anything which is or may become an annoyance or nuisance to the Business Park or which endangers the health or unreasonably disturbs the ability of the occupants of an adjoining Lot to conduct its business.

11. CONSTRUCTION VEHICLES AND REFUSE SERVICE. Owner may designate and enforce locations through and over which all construction vehicles shall enter and exit the Business Park during development. Owner shall also have the exclusive right to designate a single provider of refuse and rolloff service within the Business Park. The purpose of designating a single provider is to limit and control the number of service trucks operating within the Business Park. The rights of the Owner under this paragraph to designate a refuse and rolloff provider shall be assigned to the Corporation when buildings have been constructed upon all of the Properties within the Business Park.

12. NORTH CREEK OWNERS ASSOCIATION: Every person or entity who owns a Lot within the Properties shall be a member of the Association. However, any person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

13. MANAGING AGENT. The Owner or the Association may contract for the performance of any of the Association's rights, obligations or responsibilities with any entity or individual ("Managing Agent"). The Managing Agent shall exercise such authority which may be granted by the Owner or Association. The fee charged by the Managing Agent shall be a common expense of the members.

14. MEMBERSHIP: The Association shall have two classes of membership:

Class A membership shall include all members of the Association except the Owner and any successor in interest. Each Class A member of the Association shall be entitled to all the rights of membership and to one vote for each 1,000 sq. ft. of area of the Lot or Lot(s) owned by the member, with a minimum of one vote.

Class B membership shall include only the Owner and any successor in interest. The Class B member shall be entitled to five times the votes which it would qualify for as a Class A member. However, the Class B membership shall be converted to Class A membership when the total number of votes entitled to be cast by Class A members equals the total number of votes entitled to be cast by the Class B member.

Any member in default of payment of any assessments provided for in these Covenants shall forfeit any voting privileges until the default is cured.

15. CONVEYANCE OF COMMONS: Owner shall convey any Commons to the Association, free from encumbrance, but subject to easements and restrictions then of record and any requirements of the City of Lincoln within one year after the conversion of Class B membership to Class A membership.

16. USE OF COMMONS: Each member of the Association shall have the right to use and enjoy the Commons as established by the rules, regulations and requirements of the Association and shall have an easement upon the Commons for the use thereof, which shall be appurtenant to the interest requisite for membership.

17. RIGHTS IN COMMONS: The rights and easements of the members of the Association shall be subject to:

- a. The right of the Association to borrow money for the purpose of improving the Commons and to mortgage the Commons. In the event of default, the mortgagee shall have the right, after taking possession of the Commons, to charge admission and other fees as a condition of the continued use of any facilities within the Commons by the members, and to open the facilities to a wider public until the mortgage debt is satisfied. Any mortgage of the Commons shall be approved by the affirmative vote of two-thirds of each class of members entitled to vote, present in person or by proxy, at a regular meeting of the members or at a special meeting of the members, if notice of the proposed mortgage is contained in the notice of the special meeting.
- b. The right of the Association to take any steps reasonably necessary to protect the Commons against foreclosure.
- c. The right of the Association to suspend the enjoyment of the facilities by any member for any period during which an assessment remains unpaid, and for a period not to exceed 30 days for any infraction of the published rules and regulations governing the use of the facilities.
- d. The right of the Association to dedicate or convey all or any part of the Commons to any public entity.

18. MAINTENANCE OF LANDSCAPE SCREENS: Each member of the Association who is the titleholder of a Lot on which any landscape screen, whether composed of structural or live plant material, which is installed as required by the City of Lincoln, Nebraska, shall be deemed to covenant to maintain the screen.

19. GENERAL MAINTENANCE OBLIGATIONS. Each member of the Association shall be responsible for the proper storage and disposal of all construction debris and materials associated with the construction of any improvements upon their Lot. Lots shall be periodically mowed and loose debris and materials picked up and properly stored to prevent them from being spread and blown throughout the Properties. Each member shall be responsible for the enforcement and monitoring of these obligations for all contractors and suppliers performing work upon their Lot. The Owner and Association shall have the right to develop, prepare, publish and enforce specific maintenance obligations relating to the appearance and upkeep of

the buildings and improvements on any Lot provided these obligations are enforced uniformly upon all Lots within the Properties.

20. FAILURE TO MAINTAIN. In the event any member fails or refuses to perform any required maintenance and upkeep of any landscape screen or the general maintenance obligations, the Owner or Association after seven (7) days notice to the member in default, may perform the required work or maintenance. The actual cost of performing the work or maintenance together with an administrative fee of \$25.00 or 10% of the cost of the work, whichever is greater shall be the personal obligation of the member who is or was the owner of the Lot failing to perform their maintenance obligations, shall bear interest at the rate of 14% per annum and shall be a lien upon the Lot assessed.

21. ASSOCIATION RESPONSIBILITIES: The Association shall provide such services to its members as they may determine. These services and responsibilities of the Association shall include, but are not limited to, the following:

- a. Maintenance of Commons. The Association covenants and each member of the Association, by the acceptance of a deed by which the interest requisite for membership is acquired, shall be deemed to covenant to maintain the Commons to the extent not otherwise provided for by these Covenants, which Covenants by the members shall be satisfied by the payment of annual and special assessments for the administration, maintenance or improvement of the Commons.
- b. Refuse Services. The Association may provide to each member refuse collection services through a single designated provider. The cost of these services shall be paid for by the members as part of their annual dues and assessments. The cost of the refuse services for any member shall be proportional to their use of the service.
- c. Lawn, Snow and Other Services. The Association may provide to any member lawn maintenance, snow removal and other services through designated providers at the request of two or more members. The costs of these services shall be paid for by the members requesting these services as part of their annual dues and assessments at the rates quoted the Association.

22. LIEN OF DUES AND ASSESSMENTS: The lien of any dues or special assessment shall, until shown of record, be subordinate to the lien of any mortgage placed upon the Lot against which the assessment is levied.

23. ANNUAL ASSESSMENTS AND LIENS: Annual dues and special assessments, other than for capital improvements, may be levied by the Board of Directors of the Association. Annual dues and special assessments shall be assessed against the members on a pro rata basis determined by the acreage of the Lots. Any special assessment for capital improvements may be rejected at any time within 30 days of the notice of the levy by the vote of a majority of each class of members affected and entitled to vote, at a regular meeting of the members or at

a special meeting of the members, if notice of a special assessment is contained in the notice of the special meeting.

The members shall pay annual dues and special assessments to the Association or Managing Agent as billed. Each member's dues shall be determined on an annual basis for each fiscal year, prorating a fractional year which may occur by issuance of a building permit for any building. The initial annual dues shall be established at a later date but shall generally be based upon the relative square footage ratio of the Lots within the Properties. Changes in the amount of future annual dues shall be based upon an estimate of the Association's costs for administration, maintenance and improvement of the Commons and each member shall pay the annual dues so established in advance. At the end of each fiscal year, a statement of the total year's Common's operating costs may be presented to the members of the Association and the members shall pay any excess charge to the Association within thirty (30) days of the statement.

- a. Budgets. The Association or Managing Agent shall prepare, approve and make available to each member a pro forma operating statement (budget) containing: (1) estimated revenue and expenses on an accrual basis; (2) the amount of any cash reserves of the Association currently available for replacement or major repair of the Commons and for contingencies; (3) an itemized estimate of the remaining life of, and the methods of funding to defray repair, replacement or additions to, major components of the Commons; (4) a general statement setting forth the procedures used by the Association in the calculation and establishment of reserves to defray the costs of repair, replacement or additions to major components of the Commons; and (5) the cost of providing services to its members as set forth in these Restrictive Covenants.
- b. Additional Charges: In addition to any amounts due or any other relief or remedy obtained against a member who is delinquent in the payment of any dues or assessments, each member agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association or Managing Agent may incur or levy in the process of collecting from each member monies due and delinquent. All Additional Charges shall be included in any judgment in any action brought to enforce collection of delinquent dues or assessments. Additional Charges shall include, but not be limited to, the following:
  - i. Attorney's Fees: Reasonable attorney's fees and costs incurred in the event an attorney(s) is employed to collect any dues, assessment or sum due, whether by suit or otherwise;
  - ii. Late Charges: A late charge in an amount to be fixed by the Association to compensate the Association for additional collection costs incurred in the event any dues, assessment or other sum is not paid when due or within any "grace" period. The late charge shall not exceed ten percent (10%) of the delinquent assessment or twenty dollars (\$20), whichever is greater.

- iii. Costs of Suit: Costs of suit and court costs incurred as allowed by the court;
  - iv. Filing Fees: Costs of filing notice of lien in the Office of the Register of Deeds;
  - v. Interest: Interest on all dues and assessments at the rate of 14% per annum, commencing thirty (30) days after the assessment becomes due; and,
  - vi. Other: Any other costs that the Association may incur in the process of collecting delinquent dues and assessments.
- c. Lien. The dues and assessments shall be the personal obligation of the member who is the owner of the Lot assessed at the time of the assessment and when shown of record shall be a lien upon the Lot assessed.
- d. Fines. The Association may create a schedule of fines for violation of Association rules and regulations which fine shall be treated and billed as a special assessment to the offending member's Lot.

24. ADDITIONS: The Owner may add additional contiguous or adjacent real estate to the Properties or the Commons, at any time, without the consent of the members of the Association. Additions shall be made by the execution and recordation of Restrictive Covenants upon the additional real estate, making the addition subject to these Restrictive Covenants. These additions may include a class of Limited Commons, i.e. Commons that benefit more than one member of the Association but not all members. The costs of maintaining and improving any Limited Commons shall be borne solely by those members having the right to use the Limited Commons.

25. AMENDMENTS: These Restrictive Covenants shall run with the land and shall be binding upon and enforceable by the Owner and all persons claiming under the Owner. These Restrictive Covenants may be terminated or modified, in writing, by the titleholders of two-thirds of the Lots within the Properties, at any time or by the Owner at any time within five (5) years of the date of these Covenants are recorded provided Owner is the titleholder of not less than one-half of the Lots within the Properties.

26. ENFORCEMENT: The enforcement of these Restrictive Covenants may be by proceedings at law or in equity against any person violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation, or to recover damages and, by the Association or Owner, may be to enforce any lien or obligation created hereby.

27. SEVERABILITY: The invalidation of any one of these Restrictive Covenants shall not affect the validity of the remaining provisions hereof.



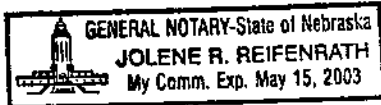
February 7, 2001  
Dated: ~~September~~ 7, 2000.

LINCOLN NORTH CREEK, L.L.C.  
By: Hampton, L.L.C., Managing Member

By: Robert D. Hampton  
Robert D. Hampton, Managing Member

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 7th day of ~~September~~ February, 2000, by Robert D. Hampton, Managing Member of Hampton, L.L.C., on behalf of the limited liability company as Managing Member of Lincoln North Creek, L.L.C.



Jolene R. Reifernath  
Notary Public

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## **Attachment A**

### **NORTH CREEK TRADE CENTER SIGN RESTRICTIONS**

All applicable sections of the City of Lincoln Municipal Code shall apply to the installation of signs in the North Creek Trade Center, with the following additional restrictions, which shall govern:

1. Only one ground or pylon sign shall be allowed per lot. Such signs shall be set at a consistent height. The height of the horizontal or vertical mounting base shall be adjusted accordingly to maintain visual consistency. The maximum height shall be 30 feet.

2. Pylon signs shall be in lieu of the permitted pole signs, and shall have a solid mounting base. "Pylon sign" shall mean a sign which meets the definition of "pylon sign" in the Lincoln Municipal Code, and also meets the design criteria of these Covenants. No sign copy shall be permitted on the base of any pylon sign.

3. The mounting base and the sign face shall be proportional. The mounting base shall have a height to width ratio of 5:1 for pylon signs, and a height to width ratio of 1:2 for ground signs.

4. Materials, height, placement, and all other details of the sign system shall be subject to the approval of the developer. The mounting base of pylon or ground signs shall be of nonreflective material which is either the same or of similar appearance as the building with which the sign is associated.

5. Roof Signs. No roof signs are allowed. Vertical monument signs as defined above may be approved by developer, only within Block 2.

6. Wall Signs.

a. One on-premises building identification wall sign shall be permitted per building. The sign area of such wall sign shall not exceed ten percent of the building's largest façade, or 100 square feet, whichever is lesser;

b. In addition to the above, each tenant shall be allowed one on-premises entrance wall sign not to exceed ten square feet of sign area. Tenant wall signs shall be located no further than fifty feet from a building entrance door;

7. Off-Premise Signs. No off-premise signs shall be permitted.

8. Signs approved by the Lincoln City Council as part of a use permit or special permit for planned service commercial or stores and shops for retail sales and service which exceed 20,000 square feet of floor area shall not be subject to the height, area or number restrictions of these Covenants.

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## Attachment B

### NORTH CREEK TRADE CENTER LANDSCAPE COVENANTS

1. Objective: The standards set forth herein are intended to promote the establishment of a distinct character for the North Creek landscape, providing visual continuity between areas and acknowledging the need for variation and unique treatment in specific locations. In addition, the standards are intended to guide the design and maintenance of the landscape to provide an attractive, well-maintained development; enhance and preserve natural areas that reflect the existing (original) character of the site; and to minimize the adverse impact of large paved areas, utilities, and service bays. Finally, the standards are intended to provide continuity with the proposed entry corridor guidelines, and to help establish the quality of that important public landscape.
2. Conceptual Plan: The North Creek development will be divided into zones as defined in the following paragraphs. The zones are intended to guide the design and implementation of appropriate landscapes (and choice of materials) for each part of the site. The development shall be divided into a maximum of four zones for purposes of developing appropriate landscape plans and maintenance schedules. In general, the zone closest to each primary building can be treated in a more refined or structured manner. Many of the same materials can be used in different zones, but can be managed in distinct ways. Primary zones can be treated as natural landscapes; perimeter zones cannot be formally managed.
  - a. Primary Zone: The primary zone is defined as the area surrounding the primary buildings on the site. It generally includes the entire landscape surrounding each building. It may be designed and managed to combine refined or structured landscape elements with naturalized or native materials to provide visual and physical continuity with the perimeter and corridor zones. Plant materials may include both native and hardy introduced overstory (shade) trees, understory (ornamental) trees, evergreen trees and shrubs, deciduous shrubs that can either be allowed to grow in their natural form or pruned, perennials, grasses, and annuals. Some plants may be formally managed; others may be allowed to naturalize. Unusual non-native plants, especially those with individual specimen value, should be chosen and located with care, taking into consideration first the amount of maintenance that will be required to keep them healthy. This is the only zone where extensive use of annual beds or unusual non-native plants with sensitive growing requirements will be allowed. Water-conserving irrigation for purposes of plant establishment or emergency drought use only should be used in this zone. Turf options include managed buffalograss and turf-type tall fescues.
  - b. Perimeter Zone: The perimeter zone is defined as the area abutting the boundaries of the site, unless otherwise included in the corridor zone or streetscape zone. It should be designed and developed as native and naturalized landscape, with limited use of plant materials that will require more than minimal future maintenance. Formal pruning of plant materials ("shaping") is not allowed in this zone; pruning shall be done for corrective or structural purposes only. Plants that naturalize readily should be encouraged in appropriate locations to reduce the amount of intensely managed turf. Native plants (and improved varieties thereof) should be chosen over introduced materials. Annual beds will not be allowed in this zone. Water-conserving irrigation for purposes of plant establishment or emergency drought use only should be used in this zone. Turf options include buffalograss and short and tallgrass prairie mixes.

## Attachment B

- b. Corridor Zone: The corridor zone is defined as the area adjacent to the interstate property line, contiguous from one portion of the site to another. It should be designed and developed to provide visual and physical continuity with the "Nebraska-style" landscapes proposed for the interstate corridor, and to serve as a prototype for future developments along the interstate. Attention to appropriate screening and the use of plant materials to focus views toward prominent building features and natural elements, planting in masses that will naturalize and blend with one another, and the use of a large proportion of native plants are a part of the landscape development of this zone. Introduced materials should be used only if they blend aesthetically and in terms of their care requirements with the native species. Water-conserving irrigation for purposes of plant establishment or emergency drought use only should be used in this zone. Annual beds are not allowed in this zone. Turf options include naturalized buffalograss and shortgrass prairie mixes.
- c. Streetscape Zone: The streetscape zone is defined as the area adjacent to the primary arterial street(s) serving North Creek development. It should be designed and developed to be consistent with the street tree requirements of the City of Lincoln, and further enhanced with shrubs, perennials and grasses in large masses to emphasize entrance points and give the development a distinct character. It should also complement the surrounding neighborhoods. Plant materials may include both native and hardy introduced overstory (shade) trees, understory (ornamental) trees, evergreen trees and shrubs, deciduous shrubs that can either be allowed to grow in their natural form or pruned, perennials, grasses, and annuals. The boulevard plantings should be designed to have visual continuity with the plants in adjacent zones, which can be accomplished by repeating some of the species in each location and using the same type of turf. A great variety of plant materials is acceptable, if designed to provide rhythm and continuity. Plants that naturalize readily should be used with caution in this zone. Turf options include managed buffalograss and turf-type tall fescues.
4. Parking Lot Landscaping: The setback between parking lots and streets shall be landscaped in accordance with the secondary zone identified previously. It shall meet or exceed the design standards for the City of Lincoln. Where possible berms with a slope not to exceed 3:1 shall be used to screen parked cars. Such berms shall be further enhanced with masses of plant material and specimens as appropriate.
5. Unimproved Areas: All areas not paved or built upon must be landscaped in accordance with the zoning concept outlined previously. Large uninterrupted areas of gravel, wood mulch, or bare soil are prohibited.
6. Irrigation Systems: All irrigation systems are to be below ground and fully automatic. They must comply with applicable building code requirements. All backflow valves are to be located with the confines of the building or a support structure. The use of drip irrigation is encouraged in planting beds.
7. Plant Materials Variety: The attached plant list is intended as a starting point for the selection of a variety of plant materials. The plants included in the list are representative of the types of materials that are appropriate for each zone. All landscape plans must be approved prior to the installation of materials.
8. Preservation of Existing Vegetation: Where existing vegetation occurs, it should be preserved if possible. The intrinsic environmental values associated with the wetlands and woodlands add to the distinct character of the development.

## **Attachment B**

9. Installation and Maintenance: The Tenant shall be responsible for the installation and proper maintenance of all landscape materials in accordance with the maintenance standards defined by the Developer.

Attachment B  
NORTH CREEK TRADE CENTER SUGGESTED PLANT LIST

**DRAFT**

ZONE	OVERSTORY TREES	
ABD	<i>Acer rubrum</i>	Red Maple*
ACBD	<i>Acer nigrum</i> 'Greencolumn'	Greencolumn Black Maple
AB	<i>Betula nigra</i>	River Birch
ABCD	<i>Celtis occidentalis</i>	Hackberry
ABCD	<i>Corylus colluma</i>	Turkish Filbert
ABCD	<i>Fraxinus americana</i> 'Autumn Purple'	Autumn Purple White Ash
ABCD	<i>Fraxinus pennsylvanica</i> 'Cimmaron'	Cimmaron Green Ash
ABCD	<i>Gymnocladus dioica</i>	Kentucky Coffeetree
BC	<i>Platanus occidentalis</i>	Planetree
ABCD	<i>Quercus bicolor</i>	Swamp White Oak
ABCD	<i>Quercus macrocarpa</i>	Bur Oak
ABCD	<i>Quercus prinus</i>	Chestnut Oak
ABCD	<i>Quercus rubra</i>	Red Oak
ABC	<i>Tilia americana</i>	American Linden
BCD	<i>Ulmus americana</i>	American Elm
	*Other named varieties are appropriate	
	UNDERSTORY TREES	
ABCD	<i>Acer ginnala</i> 'Flame'	Flame Amur Maple
ABD	<i>Amelanchier canadensis</i>	Serviceberry
ABCD	<i>Crataegus crusgalli</i> inermis	Thornless Cockspur Hawthorn
ABCD	<i>Malus sargentii</i>	Sargent Crab
ABCD	<i>Malus</i> 'Donald Wyman'	Donald Wyman Crab
ABCD	<i>Malus</i> 'Prairifire'	Prairifire Crab
ABCD	<i>Malus</i> 'Sugartyme'	Sugartyme Crab
ABCD	<i>Malus</i> varieties*	Crabapple Varieties
ABCD	<i>Ostrya virginiana</i>	Hophornbeam
BC	<i>Prunus serotina</i>	Black Cherry
ABDE	<i>Syringa reticulata</i> 'Ivory Silk'	Ivory Silk Tree Lilac
	*Other named varieties are appropriate	
	EVERGREENS	
AD	<i>Juniperus virginiana</i> 'Taylor'	Taylor Juniper
ABC	<i>Juniperus chinensis</i> 'Seagreen'	Seagreen Juniper
ABCD	<i>Juniperus chinensis</i> varieties	Spreading Juniper varieties
AD	<i>Juniperus sabina</i> 'Calgary Carpet'	Calgary Carpet Juniper
AD	<i>Juniperus sabina</i> varieties	Tammy Juniper varieties
ABC	<i>Picea abies</i>	Norway Spruce
ABD	<i>Picea pungens</i>	Colorado Spruce
AD	<i>Pinus parviflora</i> 'Glaucua'	Japanese White Pine
ABC	<i>Pinus strobus</i>	Eastern White Pine
ABC	<i>Pinus sylvestris</i>	Scotch Pine
AD	<i>Pinus sylvestris</i> 'Hillside Creeper'	Hillside Creeper Pine
ABC	<i>Pseudotsuga menziesii</i>	Douglasfir
AD	<i>Taxus x media</i> 'Hicksii'	Hicks Yew
AD	<i>Taxus x media</i> 'Chadwicki'	Chadwick Yew
	SHRUBS	
ABCD	<i>Aronia melanocarpa</i>	Black Chokeberry
AB	<i>Cornus alternifolia</i>	Pagoda Dogwood
BC	<i>Cornus racemosa</i>	Grey Dogwood
ABC	<i>Cornus sericea</i> 'Bailey'	Redtwig Dogwood
BC	<i>Corylus americana</i>	American Filbert
ABD	<i>Euonymus alatus</i> 'Compactus'	Dwarf Winged Euonymus
BC	<i>Euonymus atropurpureus</i>	Wahoo

